IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2789 OF 2005

Suyog Development Corporation
Unit 9, Pune Petitioner

versus

1. Union of India

2. Employees P.F.Organisation,
   Pune-1.

3. Shri R.G.Waghchaure,
   Asstt.P.F.Commissioner (Recovery),
   Pune.

4. M/s.Suyog Nirmitee Developers,
   Pune.

5. Swastik Rubber Products Ltd.,
   Pune.

6. M/s.Patel Goyal & Associates,
   Pune.

7. M/s.Mahalaxmi Construction,
   Pune.

8. Union Bank of India,
   Pune. Respondents

Mr.C.U.Singh with Mr.K.S.Bapat for petitioner.
Mr.Suresh Kumar for respondents 1 to 3.

Mr.S.B.Shetye for respondent no.4.

Mrs.N.M.Menon for respondent no.5.

Mr.Neel Helekar for respondents 6 and 7.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd May 2005

PC :

1. Heard counsel. Rule. Rule returnable forthwith. Respondents waive service. Affidavit in rejoinder taken on record.

2. The petitioner has instituted this petition under Articles 226 and 227 of Constitution of India challenging an order dated 20th April 2005 purported to be issued under section 8(F) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF Act" for the sake of brevity). The impugned order proceeds to direct payment of Rs.1,19,48,500/- or such sum standing to the credit of the petitioner in the Union Bank of India, Market Yard Branch, Pune. This order directs remittance by Demand Draft to the P.F.Department. It further directs that any amount that may be credited in the Account subsequent to the order, may be remitted until the above mentioned amount is fully remitted by the said branch.

3. The complaint of Mr.Singh, learned counsel

for petitioner is that the petitioner is not the establishment covered by the EPF Act. In his submission, during the course of recovery of P.F. dues, powers are conferred by the Act which are akin to the Income Tax Act, 1961 and Recovery of Debt Due to Banks Act, 1993 to proceed against persons who owe any money to the establishment. According to Mr.Singh, such persons have to be put to notice about any money which is due or which may become due to the employer and the manner of proceeding against such person is set out in Section 8-F (2) and (3)(i). He submits that neither was any notice issued to the petitioner nor was he put to notice otherwise before taking a drastic step of directing the petitioner's banker to remit the amount from the petitioner's account to the Department. He further submits that the provisions themselves are inapplicable to the petitioner inasmuch as the petitioner was to recover monies from the establishment, since its properties were mortgaged pursuant to the approval of BIFR.. Monies have been received on 31st March 2004 by the petitioner and to such persons the provisions themselves are inapplicable.

4. The order is thus challenged on the ground of

jurisdiction as also non compliance with the mandatory provisions of sub section (vi) of Section 8-F.

5. On the other hand, Mr.Suresh Kumar appearing for respondents 1 to 3 submits that the Department is fully empowered to initiate measures including those provided by Section 8(F) for recovery of P.F.dues. He submits that P.F. dues would rank higher in priority over other debts vide Section 11(2) and the provisions of beneficial legislation enacted for the welfare of the workers ought to be interpreted in a manner enabling the P.F.Commissioner to proceed against every person including the petitioner.

6. Mr.Suresh Kumar submits that the transaction entered into by the establishment (respondent no.5) with the petitioner itself is contrary to law. It defeats the purpose of giving priority to payment of P.F.dues and recovering it by coercive measures. He submits that such a transaction would not bind the Department and it can always proceed against both the establishment as well as persons like petitioner. He submits that an affidavit is filed justifying the action.

7. In my view, the larger issue as to whether the provisions would apply to the petitioner at all, need not be gone into, at this stage. Since the impugned order has been challenged for want of compliance with the principles of natural justice, in my view, it would be sufficient to set aside the same on this ground alone. The provisions of Section 8(F) and more particularly sub sections (2) and 3(i) do not exclude but rather provide for a notice to persons like petitioner before directing remittance from their bank account to the P.F. Department. It is not disputed nor it could be disputed that directing the bankers to remit the amount to the Department concerned is a drastic measure and has serious civil consequences. Therefore, compliance with the principles of natural justice is necessary. The P.F. Department may have it’s own reasons to proceed against persons like petitioner but before it issues the final direction and order, which is drastic and serious, the least that is expected is it hears persons like petitioner.

8. In the light of the conclusion that there is no compliance with the principles of natural justice, the impugned order is quashed and set aside. However, it would be open for the P.F.

Commissioner to proceed and recover the dues due to the Department by initiating fresh proceedings either under section 8(F) or otherwise, if permissible in law. Needless to state that if said proceedings are initiated, it will always be open for the petitioner to raise appropriate challenges including jurisdiction of the Department to proceed against it. Similarly it would be open for the establishment to dispute the actions on the ground that P.F. Department having consented to the original transaction before the BIFR, it cannot now proceed to recover any monies muchless from the third party. It is clarified that it will also be open for the Department, if so advised and if permissible in law, to initiate such measures and proceedings to question the transaction which the establishment has entered into with the petitioner.

9. The petition succeeds and the impugned order is set aside. Mr.Singh appearing for petitioner submits that the petitioner’s banker has not yet remitted the amount to the Department. The petitioner would not withdraw Rs.1,19,48,520/- from its bank account for a period of four weeks from today to enable the department to take appropriate steps. Mr.Suresh Kumar states that

respondents would issue a fresh notice under section 8(F) of the EPF Act and hold necessary inquiry within a period of four weeks from today. Needless to add that if at the conclusion of the inquiry any order adverse to the petitioner is passed, the same shall not be acted upon for a period of two weeks from the date of its communication to the petitioner. Rule made absolute in above terms with no order as to costs.

(S.C.DHARMADHIKARI, J.)